

BILL ANALYSIS

S.B. 1475

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Licensing & Administrative Procedures
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Department of Licensing and Regulation (TDLR) currently administers 23 statutes with 92 total different license types. Occupations under the department's jurisdiction include barbering, cosmetology, electricians, combative sports, air conditioning contractors and water well drilling, among many others.

Because none of the seven members of the Texas Commission of Licensing and Regulation (commission), who are appointed by the Governor, may have a financial interest in any of the occupations, the commission uses advisory boards comprised of un-paid experts in their respective fields. Instances may arise when advisory board members do not attend meetings, preventing a quorum and hindering the advisory board's ability to assist the commission. There are currently no provisions allowing the replacement of such members.

Additionally, thousands of Texans come into contact daily with TDLR licensees and when members of the public have concerns or complaints regarding the work that may have been performed or the services they have received, TDLR must investigate these complaints. To clarify and enhance TDLR's enforcement and regulation provisions, the bill modifies the agency's enabling statute by providing the tools necessary for adequate enforcement and regulation. The tools necessary are similar to those already provided to other licensing agencies, such as the Board of Geoscientists, the State Board of Plumbing Examiners, the Board of Dental Examiners, the Texas Real Estate Commission and the State Securities Board, among others.

Finally, there are no provisions in place to allow TDLR to issue temporary licenses or emergency licenses in certain circumstances, such as following a disaster when clean up and rebuilding efforts require large numbers of licensees, in order to expedite licensees who need to begin work quickly.

S.B. 1475 identifies and clarifies certain powers and duties of the Texas Department of Licensing and Regulation (TDLR) including the authority to issue a subpoena under certain circumstances; providing the process of appointing and removing board members from TDLR's advisory boards; authorizing the executive director of the TDLR to issue cease and desist orders and emergency orders; and provide the authority to issue temporary and emergency licenses. S.B. 1475 also provides TDLR the authority to assist and provide funds to other state agencies in developing consistent procedures to obtain and use criminal history record information for licensing, regulatory and related purposes.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 6 and SECTION 7 of this bill.

ANALYSIS

SECTION 1. Amends Section 51.001, Occupations Code, as follows:

Sec. 51.001. DEFINITIONS. Defines "advisory board". Makes conforming changes.

SECTION 2. Amends Section 51.202(a), Occupations Code, to require the Texas Commission of Licensing and Regulation (commission) to set fees, in amounts that are reasonable and

necessary to cover the costs of administering the programs or activities, for certain licenses, examinations, and programs, including continuing education; makes a conforming change.

SECTION 3. Amends Subchapter D, Chapter 51, Occupations Code, by adding Sections 51.209, 51.210, and 51.211 as follows:

Sec. 51.209. APPOINTMENT OF ADVISORY BOARD MEMBERS. (a) Requires the presiding officer of the commission, with the commission's approval, to appoint the members of the advisory board; and appoint a member of the advisory board to serve as presiding officer of the advisory board, except as otherwise provided by the law.

(b) Requires an advisory board member to serve without compensation but provides that the member is entitled to reimbursement for actual and necessary expenses incurred in performing advisory board functions, subject to the General Appropriations Act.

Sec. 51.210. REMOVAL OF ADVISORY BOARD MEMBER. (a) Authorizes the removal of an advisory board member appointed by the presiding officer of the commission with the commission's approval on certain grounds.

(b) Provides that the validity of an action of an advisory board is not affected by the fact that it is taken when a ground for removal of a member exists.

Sec. 51.211. STATE AGENCY CRIMINAL HISTORY PROCEDURES. (a) Authorizes the Texas Department of Licensing and Regulation (department) to assist other state agencies in developing consistent procedures to obtain and use criminal history record information for licensing, regulatory, and related purposes.

(b) Authorizes the department to provide funds to other state agencies to assist with developing and implementing the procedures described under Subsection (a).

SECTION 4. Amends Subchapter G, Chapter 51, Occupations Code, by adding Section 51.3511, as follows:

Sec. 51.3511. SUBPOENAS. (a) Authorizes the Texas Department of Licensing and Regulation (department) to issue a subpoena as provided by this section.

(b) Authorizes the department to request and, if necessary, compel by subpoena the production for inspection and copying of records, documents, and other evidence relevant to the investigation of certain violations, laws, rules or orders; and the attendance of a witness for examination under oath

(c) Authorizes a subpoena under this section to be issued throughout the state and authorizes the subpoena to be served by any person designated by the commission or the executive director of Texas Department of Licensing & Regulation (executive director).

(d) Authorizes the department, acting through the attorney general, to bring an action to enforce a subpoena issued under this section against a person who fails to comply with the subpoena.

(e) Provides that the venue for an action brought under this section is in a district court in Travis County or any county in which the department is authorized to hold a hearing.

(f) Requires the court to order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

SECTION 5. Amends Section 51.353, Occupations Code, as follows:

Sec. 51.353. New heading: LICENSE DENIAL; ADMINISTRATIVE SANCTIONS. (a) Requires the commission to revoke, suspend, deny an application for, or refuse to renew a license or reprimand a license holder for certain violations, including a rule or order of the commission or the executive director.

(b) Authorizes the commission to probate the suspension of a license, rather than place on probation a person whose license is suspended.

SECTION 6. Amends Subchapter G, Chapter 51, Occupations Code, by adding Sections 51.355, 51.356, and 51.357, as follows:

Sec. 51.355. CEASE AND DESIST ORDERS. Authorizes the executive director to issue a cease and desist order if the executive director determines that the action is necessary to prevent a violation of this chapter; a law establishing a regulatory program administered by the department; or a rule adopted or order issued by the commission or the executive director.

Sec. 51.356. EMERGENCY ORDERS. (a) Authorizes the executive director to issue an emergency order to suspend or revoke a license or to halt operation of an unsafe facility or unsafe equipment that is subject to regulation by the department, if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety.

(b) Authorizes the executive director to issue the emergency order with or without notice and hearing as the executive director considers practicable under the circumstances.

(c) Requires the executive director, if an emergency order is issued under this section without a hearing, to set the time and place for a hearing conducted by the State Office of Administrative Hearings (SOAH) to affirm, modify, or set aside the emergency order not later than the 10th day after the date the order was issued. Requires the order to be affirmed to the extent that reasonable cause existed to issue the order.

(d) Authorizes the commission by rule to prescribe procedures for the determination and appeal of an emergency order under this section, including a rule allowing the commission to affirm, modify, or set aside a decision made by SOAH under Subsection (c).

(e) Provides that a proceeding under this section is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

Sec. 51.357. DEFERRED ADJUDICATION; LICENSE SUSPENSION, LICENSE REVOCATION, OR DENIAL OR REFUSAL TO RENEW LICENSE. (a) Authorizes the commission to suspend, revoke, deny an application for, or refuse to renew a license if the commission determines that a deferred adjudication makes the person holding or seeking the license unfit for the license.

(b) Requires the commission to consider the factors set forth in Sections 53.022 (Factors In Determining Whether Conviction Relates To Occupation) and 53.023 (Additional Factors For Licensing Authority To Consider) and the guidelines issued by the department under Section 53.025 (Guidelines).

SECTION 7. Amends Subchapter H, Chapter 51, Occupations Code, by adding Sections 51.407 and 51.408, as follows:

Sec. 51.407. TEMPORARY LICENSE. (a) Authorizes the commission by rule to provide for the issuance of a temporary license to an applicant who meets certain criteria.

(b) Provides that a temporary license expires on the 21st day after the date of issuance and is prohibited from being renewed.

(c) Provides that a temporary license holder is subject to this chapter (Texas Department of Licensing and Regulation) and certain laws and rules.

Sec. 51.408. EMERGENCY LICENSE. (a) Authorizes the executive director to issue an emergency license to a person who meets eligibility requirements provided by a law establishing a regulatory program administered by the department or a rule adopted to implement this section.

(b) Provides that the license expires on the date indicated by the executive director, but not later than the 90th day after the date of issuance.

(c) Authorizes the emergency license holder to engage in the activities authorized by the type of license only during a time declared as a state of disaster and the following recovery period; and in an area designated as a disaster area pursuant to Chapter 418 (Emergency Management), Government Code.

SECTION 8. Effective date: September 1, 2007.

EFFECTIVE DATE

September 1, 2007.